

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

2 Applicant: A.N. Schwartz et al. Attorney Docket No: SWTZ110464  
3 Serial No: 08/794,154 Group Art Unit: 3408  
4 Filed: February 3, 1997 Examiner: P. Nerbun  
5 Title: GOGGLES WITH PLIABLE AND RESILIENT SEALING PAD

6 **PETITION FOR REMAND**

7 Seattle, Washington 98101

8 October 15, 1998

BOARD OF PATENT  
APPEALS &  
INTERFERENCES  
OCT 15 1998

9 TO CHIEF JUDGE, BOARD OF PATENT APPEALS AND INTERFERENCES:

10 Applicants respectfully request that this application be remanded to the Examiner for the  
11 purpose of entry of an Amendment canceling Claims 13, 14, 48 and 49 from the application presently  
12 on appeal. This petition is based upon the following facts:

13 1. On March 26, 1997, the primary Examiner Peter Nerbun entered a Final Rejection of  
14 the claims in the pending application. See Paper No. 15 in Application No. 08/794,154. This Office  
15 Action also indicated that Claims 13, 14, 48 and 49 were objected to as being dependent upon a  
16 rejected base claim, but would be allowed if rewritten in independent form including all the limitations  
17 of the base claim and any of the intervening claim.

18 2. On June 24, 1997, applicants filed an appeal from the Final Rejection in this  
19 application.

20 3. On December 30, 1997, the Examiner filed his Answer in this appeal. See Paper  
21 No. 20 in application No. 08/794,154. Applicants filed a Reply Brief on March 2, 1998. See Paper  
22 No. 24. On September 25, 1998, this application was remanded to the Examiner for "a proper  
23 response to Reply Brief." See Paper No. 25.  
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1           4.     In the meantime, applicants filed a new application (Serial No. 09/069,706) on  
2 April 29, 1998. This new application included four new claims which restated Claims 13, 14, 48, and  
3 49 from Application No. 08/794,154 in independent form including all of the limitations of rejected  
4 base claim and any intervening claim, as suggested by the Examiner in his March 24, 1997 Office  
5 Action.

6           5.     On July 16, 1998, the Examiner mailed an Office Action in Application  
7 No. 09/069,706, provisionally rejecting the four new claims under 35 U.S.C. § 101 as claiming the  
8 same invention as Claims 13, 14, 48 and 49 of the co-pending Application No. 08/794,154. See  
9 Exhibit A hereto.

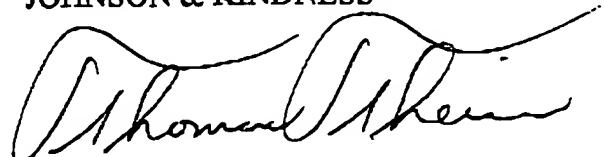
10           6.     Applicants respectfully request that Application Serial No. 08/794,154 be remanded to  
11 the Examiner for purpose of entry of an amendment canceling Claims 13, 14, 48 and 49 from that  
12 application. See Exhibit B hereto.

13           Additional Fee Charges or Credit for Overpayment

14           The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16, 1.17 and  
15 1.18 which may be required during the entire pendency of the application, or credit any overpayment,  
16 to Deposit Account No. 03-1740. This authorization also hereby includes a request for any  
17 extensions of time of the appropriate length required upon the filing of any reply during the entire  
18 prosecution of this application. A copy of this sheet is enclosed.

19                     Respectfully submitted,

20                     CHRISTENSEN O'CONNOR  
21                     JOHNSON & KINDNESS<sup>PLLC</sup>

22                     

23                     Thomas D. Theisen  
24                     Registration No. 35,713  
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1 I hereby certify that this correspondence is transmitted via facsimile addressed to: Facsimile No.  
2 703.308.7952, Attn: Craig Kleinberg, U.S. Patent and Trademark Office, Board of Patent Appeals and Interferences,  
3 Washington, D.C. 20231, on October 15, 1998.

4 Date: October 15, 1998

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